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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,481	04/12/2004	Debra L. Holte	HOLTE1	3032

7590 12/13/2004

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EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/822,481	<b>Applicant(s)</b> HOLTE, DEBRA L.	
	<b>Examiner</b> Son T. Nguyen	<b>Art Unit</b> 3643	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/12/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "34" has been used to designate bottom layer and 2<sup>nd</sup> covering layer. Reference character "36" has been used to designate side panel, 3<sup>rd</sup> intermediate layer and 4<sup>th</sup> intermediate layer. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 16,17,24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

***Claim Objections***

4. Claims 22-25 are objected to because of the following informalities: the claims are designated as dependents of claim 18; however, the Examiner believes this is an error because these claims should be dependent of claim 19 and not claim 18. For examining purpose, the Examiner is considering these claims to be dependent of claim 19. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 1-25** are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 622018A1 (herein EP018) in view of US 4961982 (herein 982).

For claims 1 & 19, EP018 teaches a cushion for domestic pets comprising: (a) a padding layer 14b,24b of slow recovery visco-elastic foam (col. 4, lines 29-38); (b) a supporting padding layer 12b,22b of a stabilizing material which supports the visco-elastic foam and provides additional cushioning, adjacent to said cushion of slow recovery visco-elastic foam; (c) a protective liner 12a,14a,22a,24a of a waterproof, breathable, flexible material, enclosing both the said padding material of visco-elastic foam and said supporting padding material (col. 4, lines 50-55); (d) a washable fabric cover 12,14,22,24 totally enclosing said padding material of slow recovery visco-elastic foam, said supporting padding material, and said protective liner. However, EP018 is

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silent about the liner being waterproof, breathable, flexible material and the cover being washable fabric.

982 teaches a cushion in which the liner 35,35A,36,36A being waterproof, breathable, flexible material/moisture vapor transmission and the cover 21,21A being washable fabric. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the liner of EP018 out of a waterproof, breathable, flexible material as taught by 982, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the cover of EP018 out of a washable fabric as taught by 982, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claim 2, EP018 as modified by 982 (emphasis on EP018) further teaches wherein the supporting padding layer is comprised of a textile-based material (col. 4, lines 15-28).

For claims 3 & 4, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the supporting padding layer of EP018 as modified by 982 out of foam or rubber material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claims 5 & 6, in addition to the above, 982 teaches the waterproof, breathable, and flexible protective liner material comprises a hydrophilic laminate/coating (col. 9, lines 1-11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to laminate the protective liner of EP018 as modified by 982 with a hydrophilic laminate/coating as further taught by 982 in order to assure rapid dissipation of liquid (see 982, col. 9, lines 1-11).

For claims 7 & 8, it would have been obvious to one having ordinary skill in the art at the time the invention was made to laminate the liner of EP018 as modified by 982 with a microporous laminate/coating, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claims 9 & 10, it would have been obvious to one having ordinary skill in the art at the time the invention was made to laminate the liner of EP018 as modified by 982 with a bi-component laminate/coating, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claim 11, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the liner material of EP018 as modified by 982 out of a material fabricated from a microfiber of a close weave to be waterproof and breathable, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

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For claim 12, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the liner material of EP018 as modified by 982 out of a material fabricated with a monolithic membrane, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claims 13 & 21, in addition to the above, 982 teaches the liner material is naturally oleophobic, anti-dust mite, anti-odor, anti-bacterial, anti-stain, and anti-static (col. 9, lines 1-11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the protective liner of EP018 as modified by 982 with oleophobic, anti-dust mite, anti-odor, anti-bacterial, anti-stain, and anti-static as further taught by 982 in order to kill bacteria coming in contact with the material (see 982, col. 9, lines 1-11).

For claim 14, EP018 as modified by 982 (emphasis on EP018) further teaches wherein said outer fabric cover has a releasable closure so that said fabric cover may be removed from the said padding of slow recovery visco-elastic foam, said padding of stabilizing support material, and said protective liner, for washing (col. 5, lines 22-33).

For claims 15 & 22, EP018 as modified by 982 (emphasis on EP018) further teaches wherein said out fabric cover is comprised of a top surface, a bottom surface, and peripheral side walls disposed between said top and bottom surfaces (see drawings of EP018).

For claims 16 & 23, EP018 as modified by 982 (emphasis on EP018) further teaches wherein said waterproof, breathable, and flexible protective liner is sealed

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closed by a method such as, but not limited to, sewing, gluing, or thermal bonding around said padding layer of slow-recovery visco-elastic foam and said supporting padding layer in such a close-fitting and tight manner that the protective liner does not allow for the inner padding layers, of said slow recovery visco-elastic foam and said supporting stabilizing material, to shift or move about within the said protective liner (col. 4, lines 50-55).

For claims 17 & 24, EP018 as modified by 982 (emphasis on EP018) further teaches wherein said cushion has numerous overall geometric shape possibilities, such as but not limited to, square, round, rectangular, semi-circular, triangular, or pie-shaped (see drawings of EP018).

For claims 18 & 25, EP018 as modified by 982 (emphasis on EP018) further teaches wherein said cushion may be used by a domestic pet or human (col. 1, lines 1-12).

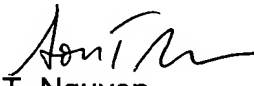
For claim 20, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the liner of EP018 as modified by 982 out of a close-weave fabric of a sufficiently close weave to be waterproof and breathable, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Son T. Nguyen  
Primary Examiner  
Art Unit 3643

stn